



# Civil Resolution Tribunal

Date Issued: August 9, 2018

File: SC-2018-000945

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc v. JCC Hospitality Ltd.*, 2018 BCCRT 433

**B E T W E E N :**

Super Save Disposal Inc

**APPLICANT**

**A N D :**

JCC Hospitality Ltd.

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This is a dispute about a contract for waste disposal services. The applicant, Super Save Disposal Inc (Super Save), says the respondent, JCC Hospitality Ltd., breached the contract between the parties by attempting to cancel the services before the agreed term ended. The applicant seeks liquidated damages of

\$2,350.66. The applicant is represented by an employee, Marli Giesel. The respondent is represented by its principal, Jin Hong Park.

## **JURISDICTION AND PROCEDURE**

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
5. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

7. The issue in this dispute is whether the respondent breached the contract between the parties, and if so, what remedy is appropriate.

## EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
9. The parties signed a contract for waste disposal services on November 23, 2016. At the time the parties signed the contract in 2016, the respondent was under a waste disposal agreement with a third party waste hauler, R Inc., which term ended on November 23, 2017. Given the existing contract with R Inc., the parties' contract was effective November 23, 2017.
10. I turn then to the contract's relevant terms (my bold emphasis added):
  - a. The "monthly charge" is for a weekly service of a 2-yard bin (\$113.14) and organics removal (\$61.18).
  - b. The applicant has the exclusive right to provide all non-hazardous solid waste disposal, organics, and recyclable collection services (Clause 1).
  - c. The respondent agrees that it **will not enter into or renew any other service agreement with any third party during the contract's term** (Clause 1).
  - d. The stated effective date of the contract is 1 year after the contract was signed, November 23, 2017, for a 1-year term (Clause 2).
  - e. The respondent can terminate the contract by providing not more than 120 days and not less than 90 days written notice, by registered mail, **before the end of the term or any renewal term**. This is defined as the 'cancellation window'. (Clause 2).
  - f. The contract is effective either 1) the first day equipment is delivered, or 2) if the respondent was obligated under a pre-existing service contract with a third party, the first day after the expiration or termination of that pre-existing

contract, but the **parties' contract is a legally binding contract from the date of execution until the effective date, and thereafter until the end of its term** (Clause 3).

- g. **The respondent agrees not to renew any third party service contract**, pending the effective date of the parties' contract (Clause 3).
  - h. If the respondent "unlawfully" terminates the agreement before the term's expiry, The applicant may, at its option, accept the respondent's repudiation, and in that case the respondent agrees to immediately pay liquidated damages consisting of all amounts owing to the end of the term, plus an amount equal to the monthly charges (plus tax) (Clause 11).
  - i. If the respondent at any time receives a bona fide offer from a third party, or, enters into an agreement with such a third party, the respondent must within 5 days of receiving the third party's offer deliver a copy to the applicant. **The applicant has the right of first refusal**, to provide services upon the expiry of the contract's term on the same conditions as set out in the third party's offer (Clause 13).
11. As per the parties' agreement, around August 15, 2017 the applicant sent cancellation letters to R Inc, on the respondent's behalf, which were signed by the respondent. Another follow-up letter was sent around August 22, 2017.
12. On August 22, 2017, the respondent's principal signed a renewal waste services contract with R Inc, which among other things states, "Renegotiated with customer based on Super Save quote". That same day, the respondent wrote the applicant that it would continue to utilize R Inc's services, noting the respondent was still under the existing agreement with R Inc. The respondent wrote that its contract with the applicant contained a "Right to Negotiate" provision that the respondent had elected to exercise, and therefore the applicant's services were not required.

13. On or about November 27, 2017, the applicant attempted to deliver the bins as per the agreement. The respondent refused delivery. The applicant treated the respondent's refusal of delivery as a breach of their agreement.
14. As set out in the contract, on December 4, 2017, the applicant sent an 'early termination' letter setting out the respondent's breach and the applicant's liquidated damages claim, if the respondent insisted on cancelling the agreement. In this letter, the applicant claimed 12 months each for the 2 yard waste (\$113.14 monthly, for a total of \$1,357.68) and for the organics (\$73.42 monthly, for a total of \$881.04). There is no explanation before me why the applicant claimed \$73.42 per month for the organics, when the contract stated the monthly charge was \$61.18. The applicant's total claim in the letter was \$2,350.66, including GST, which is the amount claimed in this dispute. The applicant gave the respondent 10 days to respond, or else the applicant would assume repudiation.
15. The respondent confirmed its refusal to proceed and the applicant proceeded with its claim for damages.
16. First, I find the respondent misunderstood the "Right of First Refusal" term set out in Clause 13, which I infer is what the respondent meant by "right to negotiate" provision. Clause 13 means that at the end of the parties' contract, if the respondent wanted to get services from a different waste hauler, it had to give the applicant the right of first refusal to offer services at that other hauler's rate. In effect, the applicant's contract with the respondent could bind the respondent indefinitely, so long as the respondent continued to require waste disposal services and the applicant continued to match competitors' prices. Contrary to the respondent's submission, clause 13 does not permit the respondent to renew its contract with R Inc. I say this because of clause 3. Having signed the contract with the applicant on November 23, 2016, the respondent agreed to accept the applicant's services as of November 23, 2017 and also agreed not to renew its contract with R Inc. Yet, that is exactly what the respondent did, when it renewed with R Inc. on August 22, 2017. Having done so, the respondent breached its

contract with the applicant and the applicant was entitled to accept the repudiation and claim liquidated damages.

17. Second, the respondent did not terminate the parties' contract within the defined cancellation window, which would be between July 26 and August 25, 2018. Instead, the respondent terminated it on August 22, 2017.
18. The respondent submits that the applicant's salespeople misrepresented the contract and were negligent. I find the respondent has not provided sufficient evidence in support of this allegation. The respondent submits the salespeople said that the applicant could end the respondent's contract with R Inc "without any penalty". The respondent's principal says his 2 employees and a trainee heard the conversation, but did not provide any statements from them. I find the evidence before me does not support a conclusion that the applicant forced the respondent to breach its contract with R Inc, as alleged by the respondent. I therefore place no weight on this submission.
19. Here, the respondent's principal signed letters that the applicant sent to R Inc on his behalf, cancelling the respondent's contract with R Inc, presumably within R Inc's cancellation window. The respondent says that he waited for a call or letter from the applicant after signing the November 23, 2016 contract, but as nothing happened he "eventually forgot" about the contract. I find this is not a valid basis upon which the respondent was entitled to cancel its contract with the applicant.
20. The respondent appears to submit that R Inc had a similar right of first refusal clause, and thus it was bound to continue with R Inc. The difficulty for the respondent is that its principal signed the contract with the applicant and is bound by it, even if that means the respondent ended up with 2 binding waste services contracts.
21. I acknowledge prior decisions that disposal service contracts are onerous and there is a need for consumer protection. However, the court in *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.*, 2014 BCSC 690 considered identical

language involving the applicant and found the contract enforceable. While I am not bound by other tribunal decisions, I am bound by the court's decision in *Tristar* (for similar reasoning see also: *Super Save Disposal Inc. v. Paul's Metal Service Inc.*, 2018 BCCRT 191, *Super Save Disposal Inc. v. Gill's Dream Enterprise Ltd.*, 2018 BCCRT 298, and *Super Save Disposal Inc. v. K.M.I. Holdings Ltd.*, 2018 BCCRT 285).

22. In short, while the contract's terms are onerous, they are enforceable. Liquidated damages are a contractual pre-estimate of the damages suffered by a party in the event of a breach of contract. The parties' contract states that if the service agreement is improperly terminated by the respondent, the applicant is entitled to liquidated damages, in the amount of the remaining monthly payments owing under the agreement, plus taxes.
23. I turn then the amount of the applicant's damages claim. As referenced above, there is no explanation before me as to the higher amount claimed for organics removal. I find the applicant owes 12 months of services, under the contract. This amounts to \$1,347.68 for the 2-yard bin, and \$734.16 for organics removal, for a total of \$2,081.84, plus \$104.09 GST. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$2,290.02, from December 14, 2017.
24. The applicant claimed \$78.75 in dispute-related expenses, but provided no explanation of what this was for and no supporting evidence. Therefore, I dismiss this claim. In accordance with the Act and the tribunal's rules, as the successful party I find the applicant is entitled to reimbursement of the \$125 it paid in tribunal fees.
25. In his submission, the respondent asked for \$1,000 for his time. Given my conclusions above that the applicant is entitled to damages, I dismiss this claim.

## ORDERS

26. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$2,433.08, broken down as follows:
  - a. \$2,290.02 in liquidated damages under the parties' contract,
  - b. \$18.06 in pre-judgment interest under the COIA, and
  - c. \$125 in tribunal fees.
27. The applicant is also entitled to post-judgment interest under the COIA, as applicable. The respondent's claim for expenses is dismissed.
28. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
29. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

---

Shelley Lopez, Vice Chair